

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the Administrative Order  
Issued to David Roering

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Eric L. Lipman pursuant to a Notice and Order for Hearing dated November 17, 2008. The hearing record closed at the close of the evidentiary hearing on January 16, 2009.

Wendy Wilson Legge, Construction Codes and Licensing Attorney, appeared on behalf of the Minnesota Department of Labor and Industry (hereinafter "Department"). Respondent David Roering, appeared on his own behalf and without counsel.

**STATEMENT OF ISSUES**

1. Did the Respondent violate Minn. Stat. § 326B.46, subd. 1 (2008) by performing plumbing in St. Paul without a License?
2. Based upon the factors set forth in Minn. Stat. § 326B.083 (2008), is the amount of the penalty unreasonable?

**FINDINGS OF FACT**

1. This contested case proceeding was undertaken following Mr. Roering's appeal of an Administrative Penalty Order ("APO") issued by the Department on October 7, 2008. The APO alleged that Mr. Roering violated Minnesota's plumbing laws by installing plumbing fixtures in a dwelling where he did not reside.<sup>1</sup>

2. While Mr. Roering is a construction contractor, he is not now licensed, nor has he ever been licensed, as a plumber in Minnesota. Similarly, Mr. Roering is not registered, nor has he ever been registered, as a plumber's apprentice in Minnesota. Respondent does not hold, and never has held, a pipe-laying card in Minnesota.<sup>2</sup>

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<sup>1</sup> Exhibit 5.

<sup>2</sup> Testimony of David Roering.

3. Mr. Roering is the owner of 615 Holly Street, Saint Paul, Minnesota. The Holly Street home is a four-plex residence, but Mr. Roering does not reside at this location. Mr. Roering's residence is in Cottage Grove, Minnesota.<sup>3</sup>

4. At the time Mr. Roering purchased the Holly Street home, and thereafter, he intended to refurbish and rent the four units in the home.<sup>4</sup>

5. In the spring of 2008, Mr. Roering hired a licensed plumber, Mr. Olsen of Northern Plumbing Tech (hereinafter "Northern Plumbing"), to complete a number of tasks at the site. Included among the contracted-for work was installation of four separate water heaters, one for each unit, and installation of sinks and toilets in these units.<sup>5</sup>

6. Northern Plumbing agreed to, and did obtain, a permit for the plumbing work at the site from the City of St. Paul. It obtained Permit number 2007072040.<sup>6</sup>

7. A dispute arose between Respondent and Northern Plumbing with regard to the routing of water from the four water heaters – located in the basement of the four-plex – to the various apartments. Following Northern Plumbing's installation, each apartment could draw water from two water heaters. Mr. Roering had intended that each unit would only draw water from a single, dedicated water heater, which would be metered so as to reflect a tenant's use of utilities. With a water system that was configured so as to draw water from more than heater, Mr. Roering's metering plan was frustrated.<sup>7</sup>

8. As Roering and Northern Plumbing argued over the meaning of their installation contract, Northern Plumbing stopped work at the Holly Street home.<sup>8</sup>

9. Northern Plumbing never installed the sinks or toilets in the Holly Street apartments.<sup>9</sup>

10. In order to complete the renovations before the arrival of tenants with whom he had contracted, Mr. Roering installed kitchen and bathroom sinks in two units and a toilet in one unit of the four-plex home.<sup>10</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Ex. 2; Test. of D. Roering.

<sup>5</sup> *Id.*

<sup>6</sup> Test. of D. Roering; Ex. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Test. of D. Roering; Exs. 2 and 5.

<sup>10</sup> Test. of D. Roering.

11. At the evidentiary hearing, Mr. Roering testified that he used materials that are available at home improvement retailers in completing the installations.<sup>11</sup>

12. Upon completing the plumbing projects at 615 Holly Street, Mr. Roering requested final approval from the St. Paul Plumbing Inspector, Denny Waters.<sup>12</sup>

13. When Mr. Roering was asked by Inspector Waters whether the required air test had been completed on the installed fixtures, Mr. Roering disclosed that he had installed the sinks and toilets himself.<sup>13</sup>

14. The Department received a complaint from the City of St. Paul on July 16, 2008 alleging that Mr. Roering had installed plumbing at 615 Holly Street without the proper licensure.<sup>14</sup>

15. On October 7, 2008, the Department issued an Administrative Penalty Order assessing a non-forgivable monetary penalty against the Respondent in the amount of \$2,000.<sup>15</sup>

16. A Request for Hearing was timely received by the Minnesota Department of Labor and Industry.<sup>16</sup>

## **CONCLUSIONS**

1. The Minnesota Department of Labor and Industry has authority to enforce the Minnesota Plumbing Code pursuant to the Health Enforcement Consolidation Act, Minn. Stat. §§ 144.99 -144.993.

2. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 326B.02 (2008).

3. The Notice and Order for Hearing is proper in all respects and the Department has complied with all substantive and procedural requirements of law and rule.

4. Minn. Stat. § 326B.46 states in pertinent part:

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<sup>11</sup> Test. of D. Roering.

<sup>12</sup> Test. of D. Roering; Ex. 2

<sup>13</sup> Test. of D. Roering.

<sup>14</sup> Ex. 1.

<sup>15</sup> Exs. 3, 4 and 5.

<sup>16</sup> Ex. 1; Notice and Order for Hearing.

No person shall engage in or work at the business of a master plumber, restricted master plumber, journeyman plumber, and restricted journeyman plumber unless licensed to do so by the state commissioner. A license is not required for individuals performing building sewer or water service installation who have completed pipe laying training as prescribed by the commissioner of labor and industry... Anyone not so licensed may do plumbing work which complies with the provisions of the minimum standards prescribed by the Plumbing Board on premises or that part of premises owned and actually occupied by the worker as a residence, unless otherwise forbidden to do so by a local ordinance.<sup>17</sup>

5. Respondent did violate Minn. Stat. § 326B.46, subd. 1 (2008) by performing plumbing in St. Paul without a License.

6. Based upon the factors set forth in Minn. Stat. § 326B.083 (2008) the amount of the Administrative Penalty Order is not unreasonable.

Based upon the foregoing Conclusions, and for the reasons explained in the accompanying memorandum, the Administrative Law Judge makes the following:

#### **RECOMMENDATION**

- (1) The Commissioner of the Department of Labor and Industry AFFIRM the Administrative Penalty Order.

Dated: February 13, 2009.

/s/ Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge

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<sup>17</sup> Minn. Stat. § 326B.46, subd. 1 (a) (2008).

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steve Sviggum, Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, or telephone the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

Mr. Roering's defense is stated simply enough: He asserts that the regulatory lapse in this case was modest and that the penalty sought by the Department is unreasonable under the circumstances. Mr. Roering contends that because the plumbing materials that he used are sold by retailers to the general public, there were not appreciable safety risks from his use of these same items.

The Administrative Law Judge disagrees. The statutory exemption from plumbing licensure extends only to improvements made to "premises owned and actually occupied by the worker as a residence ...." In this case, by contrast, Mr. Roering, a landlord who resides in a neighboring community, would not have borne any of the health and safety impacts from improper installation of the Holly Street fixtures. The plumbing improvements he made were not to his own residence and potentially put others at risk.<sup>18</sup>

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<sup>18</sup> Cf., Test. of James Peterson with *In the Matter of the Administrative Penalty Order Issued to Charles Corrin*, OAH Docket No. 11-1904-16962-2 (<http://www.oah.state.mn.us/aljBase/190416962%20rt..htm>) *aff'd*, Order of the Commissioner (Nov. 2, 2007) (<http://www.oah.state.mn.us/aljBase/final/190416962.pdf>) (a \$5,000 penalty was imposed in a case where "[w]hether through carelessness or ignorance,

In such a circumstance, the penalty amount, which is consistent with the matrix earlier-developed by the Minnesota Department of Health,<sup>19</sup> was calculated with due consideration of all the statutory factors. The penalty amount is not unreasonable.

**E. L. L.**

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Respondent violated parts of the plumbing code designed to protect the integrity of a home as well as the health and safety of its occupants”).

<sup>19</sup> *Compare*, Ex. 3.